

THOMAS STOELTING ET AL.

IBLA 74-233

Decided September 17, 1974

Appeal from decisions of the Alaska State Office, Bureau of Land Management, dated January 14, 1974, declaring mining claims null and void ab initio (F-19375, F-19376, F-19377).

Two decisions set aside and remanded; one decision affirmed.

1. Administrative Procedure: Hearings--Mining Claims: Determination of Validity--Mining Claims: Withdrawn Land

A mining location made after land has been withdrawn from mining is a nullity and may properly be declared void ab initio for that reason without a hearing. If, however, a mining claimant establishes an interest in a claim located prior to the withdrawal, the claim may not be declared void ab initio without affording the claimant an opportunity for a hearing on controverted factual issues.

APPEARANCES: William E. Rollow, Esq., Whiteford, Hart, Carmody & Wilson for appellants, in cases F-19375 and F-19376; Thomas Stoelting, for the Mount SI Project Association, in case F-19377.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

On January 11, 1974, the Alaska State Office, Bureau of Land Management (BLM), issued decisions F-19375 and F-19376 declaring certain mining claims recorded by appellant Thomas Stoelting and 14 other individuals 1/ null and void ab initio because they were

1/ They are Georgia L. Stoelting, B. G. Williams, N. N. Stoelting, E. B. Baker, Thomas Stoelting II, Paul Marchuk, Nick Marchuk, Earl Vegoren, F. R. Dubell, A. V. Mitchell, A. V. Mitchell, Jr., L. C. Moore, J. T. Ruhr, K. R. Vegoren.

located on land withdrawn from mineral location. A decision, F-19377, ^{2/} the same day and to the same effect pertained to claims recorded by A. V. Pflugrad. The claims in the three cases are listed in the Appendix.

Decisions F-19375 and F-19376 indicated the claims were posted and located in January 1972, and decision F-19377 indicated the claims were posted and located in February 1972. In each decision the claims were declared null and void ab initio as to those lands which had been "withdrawn from prospecting, location, and purchase under the U.S. mining laws" by paragraph 2 of Public Land Order 5150, 36 F.R. 25410 (Dec. 31, 1971), for a utility corridor.

The locators involved in decisions F-19375 and F-19376 are represented by the same counsel in this appeal. They have set forth a lengthy history of their endeavors in the area which they call the "Mount SI Project." Affidavits and exhibits accompanied their appeal. They request an opportunity for an oral hearing and allege that the claims recorded in 1972 under the name "Borealis" are relocations of some 315 placer claims of various of the claimants originally located in 1969 under the following "nicknames": Mt. Si, Elizabeth, Ann Creek, Ventura, Michael, West Plateau, Talisman, Jerrelie, Big Delta, Pale Moon, Joe Burton, Rainy, Ann, Eureka, Red Canyon, Ursula, Judi, Old Man, Lydia, and Liberty.

Although appellants appear to be contending that they have made relocations of "some 20" valid claims existing prior to the withdrawal, they also contend that BLM officials improperly prevented them from perfecting other claims prior to the 1971 withdrawal.

[1] A mining location made after land has been withdrawn from mining is a nullity and may properly be declared void ab initio for that reason without a hearing. Richard R. Fancher, A-30840 (November 13, 1967); John H. Lawrence, A-30321 (February 3, 1965). If, however, a mining claimant can establish that he has an interest in a claim that was located prior to the withdrawal, the claim may not be declared null and void without affording the claimant an opportunity for a hearing on controverted factual issues. Id.; Brace C. Curtiss, 11 IBLA 30 (1973); Foster Mining & Engineering Co., 7 IBLA 299, 79 I.D. 599 (1972); United States v. O'Leary, 63 I.D. 341 (1956).

^{2/} The decision correctly gave the proper serial number, F-19377, in one designation, but in an apparent typographical error gave an incorrect serial number, F-19337, in another. The error is hereby corrected.

Therefore, appellants will be afforded an opportunity to establish that they met the requirements of the mining law, including the procedural requirements for making a location and the substantive requirement of establishing a discovery of a valuable mineral deposit within each claim, prior to the time the land was segregated from location under the mining laws. ^{3/} The Bureau may institute appropriate proceedings to determine the validity of the claims. ^{4/}

With respect to decision F-19377 pertaining to the Carol placer mining claims, the locator, Arnold V. Pflugard, did not personally appeal. However, within the time for filing an appeal, Thomas Stoelting filed a notice of appeal in behalf of the Mt. SI Project Association referring to those claims, as well as those in the other decisions, indicating that the Carol claims had been assigned

to the Mount SI Project on May 1, 1973 by the locator/owner of these possessory mining claims, Arnold V. Pflugard, D.M.D. of Fairbanks, Alaska which act made Doctor Pflugard an associate of the Mount SI Project. The assignment was recorded at Fairbanks, Alaska on May 1, 1973.

Stoelting then appears to protest against the Bureau's decision, but his objections to the decision are not clear to us.

As we have indicated, a mining location made after a withdrawal of the land from mining is void ab initio and may be so declared without a hearing. Therefore, to the extent the Carol claims were located upon land which was withdrawn from mineral location, those

^{3/} The record discloses that some lands were segregated by a proposed classification for multiple use management, at least as early as December 31, 1969, 35 F.R. 16; 43 U.S.C. § 1414 (1970).

^{4/} Thomas Stoelting has filed a letter in behalf of his son, Thomas Stoelting II, and foster-son, Eleazar "Billy" Baker-Stoelting, for relief under the Soldiers' and Sailors' Civil Relief Act, 50 U.S.C. App. § 561 (1970), alleging they enlisted in the U.S. Army on January 14, 1972, and January 14, 1973, respectively. The Act provides that no right initiated or acquired under the mining laws prior to a person's entering military service "shall during the period of such service be forfeited or prejudiced by reason of his absence from the land or his failure to perform any work or make any improvements thereon, or his failure to do any other act required by or under such laws." To the same effect is regulation 43 CFR 2096.2-1. The Soldiers' and Sailors' Civil Relief Act does not prevent initiation of a contest for failure to comply with pertinent laws before a claimant enters the military service. *Cf. David H. Evans*, 63 I.D. 352 (1956). Likewise, the Act does not create a right under the mining laws if no such right existed prior to such service.

claims are void ab initio. The transfer of such claims by the original locator to others does not change the status of the claims. The transferees have not alleged that the Carol claims are relocations of claims located prior to the withdrawal, but have only alleged that the Carol claims were assigned to them in 1973. In the absence of any reasons or showings that the transferees succeeded to rights initiated prior to the withdrawal, the claims were properly declared void.

The disposition of these cases makes it unnecessary or premature to rule on other issues raised by appellants.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, decisions F-19375 and F-19376 are set aside and remanded; decision F-19377 is affirmed.

Joan B. Thompson
Administrative Judge

We concur:

Joseph W. Goss
Administrative Judge

Frederick Fishman
Administrative Judge

APPENDIX

1. Decision F-19375 involved the following claims:

Borealis: A-4
 Borealis: A-7
 Borealis: SW-130-4
 Borealis: JB#7
 Borealis: JB#8
 Borealis: JB#9
 Borealis: JB#11
 Borealis: R-3
 Borealis: R-4
 Borealis: JB#10
 Borealis: SE-40-28
 Borealis: SE-50-28

2. Decision F-19376 involved the following claims:

Borealis:

NE 10-3 through NE 10-5;
 NE 20-1 through NE 20-5;
 NE 30-1 through NE 30-4;
 NE 40-1 through NE 40-3;
 NE 50-1 and NE 50-2;
 NE 60-1;
 NE 70-1;
 NW 10-3 through NW 10-5;
 NW 20-2 through NW 20-5;
 NW 30-5;
 SW 10-2 through SW 10-5, SW 10-18 through SW 10-20;
 SW 20-2 through SW 20-5, SW 20-18 and SW 20-19;
 SW 30-2 through SW 30-5;
 SW 40-1 through SW 40-5;
 SW 50-1 through SW 50-4;
 SW 60-1 through SW 60-4;
 SW 70-1 through SW 70-4;
 SW 80-1 through SW 80-4;
 SW 90-1 through SW 90-4;
 SW 100-2 through SW 100-4;
 SW 110-3 and SW 110-4;
 SW 120-3 and SW 120-4;
 SW 130-3;
 A-1, A-2, A-3, A-5, A-6, A-8, and A-9;
 JB-1 through JB-6;
 R-1 and R-2;
 SE 10-2 through SE 10-20;
 SE 20-1 through SE 20-23, Se 20-25 through SE 20-28;

SE 30-1 through SE 30-28;
SE 40-1, SE 40-2, SE 40-4 through SE 40-27;
SE 50-1, SE 50-6 through SE 50-27;
SE 60-1, SE 60-17 through SE 60-22, SE 60-26 and SE 60-27;
SE 70-1, SE 70-20 and SE 70-21;
OM-1 through OM-3;
RC-1 and RC-2;
E-1 and E-2.

3. Decision F-19377 involved the following claims:

Carol #1-16

